

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Philip Morris USA, Inc.,
Plaintiff

v.

: Civil Action No. 07-CV-08359

A & V Minimarket, Inc., et al.
Defendant.

(LAK)

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ANSWER OF HARLEM CARNICERIA DELI GROCERY CORP.
WITH AFFIRMATIVE DEFENSES

NOW COMES, the defendant HARLEM CARNICERIA DELI GROCERY CORP., by
and through its counsel, and hereby responds to the allegations of the complaint as follows:

1. The complaint alleges a single sale of a pack of cigarettes from the defendant.

Defendant denies that such pack was sold. Defendant denies that the packaging of any cigarettes sold by it at the stated date and time was false, or that anything about any cigarettes sold at the stated date and time was otherwise illegal or contrary to law.

2. The balance of the allegations in the Complaint either contain assertions of law to which no response is required, or which are not supported by the factual allegations of the Complaint, or contain factual allegations which are hereby expressly denied and strict proof is demanded.

3. At all times, Defendant and his agents acted properly. Because Defendant has not yet availed himself of his right to discovery, he may not fully know the circumstances of the alleged incidents described in the complaint. Defendant hereby notifies plaintiffs that until he has had the opportunity to avail himself of his right to discovery, he cannot determine whether or not each of the

below-stated Affirmative Defenses will, in fact, be asserted at trial. Such defenses, however, are raised in Defendant's right to assert such defenses and thereby avoid the waiver of any such defenses. Defendant reserves the right, upon completion of his investigation and discovery, to file such additional defenses as he deems appropriate.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

4. Plaintiffs have failed to join parties necessary to adequately resolve the dispute at bar and whose rights will be affected by any adjudication of the instant action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

5. Plaintiffs' complaint and each and every allegation therein fails to state a cause of action upon which relief may be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

6. All allegations that are not specifically admitted herein are denied.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

7. Plaintiffs' causes of action are barred in whole or part by the applicable statutes of limitations.

AS AND FOR AN FIFTH AFFIRMATIVE DEFENSE

8. Insofar as plaintiffs' amended complaint seeks damages against defendant, the complaint must be dismissed because plaintiffs have not sustained any damage.

AS AND FOR A SIX AFFIRMATIVE DEFENSE

9. Any and all injuries and damages sustained were the result of a third party over which the Defendant had no control.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

10. Insofar as the complaint herein seeks equitable relief and remedies of whatever kind or nature, the complaint must be dismissed in that plaintiffs, if they are found to be entitled to relief, have an adequate remedy at law.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

11. The Defendant acted on reasonable grounds and without malice, and, therefore, is not responsible to the plaintiffs for any alleged damages.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

12. Defendant hereby reserves the right to try this action to a jury for the determination of all factual matters.

WHEREFORE, defendant demands judgment dismissing Plaintiffs' complaint and each and every cause of action therein with prejudice. Defendant further requests the reimbursement to him of

his costs and attorneys' fees, and such other and further relief as this Court may deem just, equitable, and proper.

LAW OFFICES OF STEPHEN W. EDWARDS

A handwritten signature in black ink, appearing to be 'Stephen W. Edwards', is written over a horizontal line.

October 23, 2007

Stephen W. Edwards, Esq.
100 Ocean Parkway, Suite #2B
Brooklyn, New York 11218-1750
917-992-7508

AFFIRMATION OF SERVICE

I, STEPHEN W. EDWARDS, ESQ., an attorney at law duly licensed to practice in the courts of this jurisdiction, hereby affirm that I have this date forwarded copies of the foregoing Answer with Affirmative Defenses to the parties listed below by First Class, United States mail.

October 23, 2007

A handwritten signature in black ink, appearing to be 'Stephen W. Edwards', written over a horizontal line.

Stephen W. Edwards, Esq.

James G. Ryan, Esq., Esq.
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